PP

v.

MOHD AZAM RAJA ABDULLAH

HIGH COURT MALAYA, PULAU PINANG
ZAMANI A RAHIM J
[CRIMINAL TRIAL NO: 45-4-2011]
13 APRIL 2012

CRIMINAL PROCEDURE: *Sentence - Adequacy - Housebreaking with intention to commit theft - Plea of guilty - Repeat offender - Accused had eight previous convictions including four for housebreaking - Proper sentence - Whether warranting maximum jail term*

The accused, who worked as a security guard, had originally claimed trial to a charge of murder under s. 302 Penal Code ('Code'), but upon the court amending the charge to one of housebreaking with theft under s. 457 of the Code, pleaded guilty to the amended charge. The facts, as adduced, showed that the accused had burgled the deceased's house, and took away three pieces of bracelets worth between RM100 and RM200 each. In his plea of mitigation, the accused sought for leniency, *inter alia,* on grounds that he was the breadwinner of the family, had school-going children and very old parents to support and had separated from his wife. The record, however, showed that the accused had some eight previous convictions on his back, of which four were for housebreaking. These being the obtaining facts, before the learned trial judge, a question necessarily arose as to whether any leniency could be accorded to the accused by the court.

Held (imposing maximum jail term and whipping):

(1) The present conviction is the accused's fifth conviction for housebreaking and theft under s. 457 of the Penal Code. His convictions for the same offence in the years 2002 and 2007 are still considered current, and the present offence therefore comes within the enhancement of sentence (fine or whipping) as spelt out in s. 457 of the Penal Code. (paras 13 & 14)

(2) Having heard the mitigation, and the learned deputy's reply thereto, this court would sentence the accused to 14 years' imprisonment and 16 strokes of whipping. (para 15)

Case(s) referred to:
Looi Kow Chai & Anor v. PP [2003] 1 CLJ 734 CA ***(refd)***

Legislation referred to:
Penal Code, ss. 302, 378, 457

For the prosecution - Amir Hamdzah Othman DPP
For the accused - K Thanges; M/s K Thanges & Assoc

Reported by Wan Sharif Ahmad

JUDGMENT

Zamani A Rahim J:

[1] The accused was charged with the murder of one Soh Lian Thye, ("deceased") on 2 March 2010, between 5am until 9am at premises No. 34, Jalan Gurdwara, Georgetown, an offence under s. 302 of the Penal Code.

[2] Having considered the evidence adduced by the prosecution at the close of its case on a maximum basis as propounded in the Court of Appeal case of *Looi Kow Chai & Anor v. PP* [2003] 1 CLJ 734, and oral submission advanced by the defence and the prosecution, I am satisfied that a *prima facie* case has not been made out by the prosecution against the accused for an offence of murder under s. 302 of the Penal Code.

[3] There was no eye-witness or witnesses to link the accused with the crime. No DNA profiling of the accused was found at the scene of the crime or on the deceased. Likewise the deceased DNA profiling was not found on the accused to enable a reasonable inference be drawn that there was physical contact between both of them.

[4] Be that as it may, a piece of wood, P19A could possibly be the murder weapon as a lock of hair (confirmed to be that of the deceased) were found on the said P19A. According to the Consultant Pathologist, SP14 the cause of death was "Severe head injury due to blunt trauma to the head". SP14 opined that the said P19A could have caused the blunt trauma on the deceased's head.

[5] The question is: who inflicted the injuries on the deceased's head which caused her death? There was no direct or sufficient circumstantial evidence to implicate the accused with the murder of the deceased. Suspicion, however grave, is not sufficient to substitute solid evidence against the accused.

[6] However, I am of the considered view that the prosecution has succeeded to prove a case of housebreaking with the intention to commit theft and in fact theft of three pieces of bracelets valued between RM100 to RM200 was committed, an offence under s. 457 of the Penal Code.

[7] The bracelets were seized by the police from the accused's right trouser pocket. The bracelets were identified by the deceased's daughter, SP7 as hers. SP7 kept her costume jewelleries in the wardrobe in the bedroom, she shared with the deceased.

[8] I have no doubt, by way of inference that the accused has entered the deceased's house at No. 34, Jalan Gurdwara, Georgetown and stole the said bracelets and thereafter exited from the said premises. The accused has, therefore, committed housebreaking and theft of three bracelets, an offence under s. 457 of the Penal Code.

[9] I now exercise my discretionary power to amend the charge as follows:

Pertuduhan Pindaan

> Bahawa kamu pada 2.3.2010, jam lebih kurang di antara 5.00 pagi hingga 9.00 pagi di rumah No. 34, Jalan Gurdwara, di dalam Daerah Timur Laut, di dalam Negeri Pulau Pinang telah melakukan pecah rumah dengan memasuki bangunan tersebut kepunyaan Soh Lian Thye [No. KPT 340122-02-5072] yang digunakan sebagai tempat kediaman manusia, untuk melakukan suatu kesalahan tertentu yang boleh dihukum dengan hukuman penjara iaitu kesalahan mencuri 3 utas rantai tangan bernilai antara RM100.00 hingga RM200.00 dan oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 457 Kanun Keseksaan.

[10] The amended charge was marked P2A.

[11] P2A was read and explained to the accused. He pleaded guilty thereto and understood the nature and consequences of his plea. As the plea was unequivocal, I accepted his guilty plea.

[12] Learned counsel advanced the following mitigating factors:

1) The accused was aged 39 years as at the date the crime was committed.

2) He worked as a security guard at Gama supermarket, earning RM500 a month.

3) He had separated with his wife and had three children – the oldest aged 20 years, the second aged 18 years and the third 15 years. Both the second and third are school-going children.

4) The father is aged 76 years and the mother aged 72 years. They are old and unemployed. The accused is the breadwinner of the family.

5) The accused pleaded guilty as soon as the charge was amended, thus saving everybody's time eg, the court etc,.

6) The accused was in remand for the last two years and suffered mental anguish.

7) Promised not to commit similar offence in future – repented.

8) Prayed the imprisonment term to commence from date of arrest.

[13] In reply learned deputy said as follows:

1) Public interest factor must be placed in the forefront,

2) The offence committed ie, housebreaking under s. 457 of the Penal Code is a serious offence. It carries a maximum sentence of 14 years imprisonment term plus whipping for repeated offender.

3) The accused has eight previous convictions – four of which are housebreaking under s. 457 of the Penal Code and one theft case under s. 378 of the same Code. The details are as follows:

(i)

Tempat:	Mahkamah Majistret Georgetown
Tarikh:	21.10.1993
Kesalahan dan Ordinan:	Membawa senjata bahaya ke tempat awam. Sek 6(1)ABKLSB.
Hukuman:	Ikat jamin di bawah Sek. 294 KAJ dengan 1 penjamin sebanyak RM2,000.00 selama 2 tahun (ada penjamin).
No Kes dan Penjara:	Case No. 83(92)212/89 HQ Rpt. 319/89.

(ii)

Tempat:	Mahkamah Majistret Sitiawan
Tarikh:	19.12.1995
Kesalahan dan Ordinan:	Pecah rumah dan curi malam hari Sek. 457 KK.
Hukuman:	1 hari penjara dan denda RM2,000.00 dan 6 bulan penjara (bayar).
No Kes dan Penjara:	Case No. 83-171/93 Sitiawan Rpt. 2945/96.

(iii)

Tempat:	Mahkamah Majistret Timur Laut
Tarikh:	15.10.1999
Kesalahan dan Ordinan:	Pecah rumah dan curi malam hari Sek. 457 KK.
Hukuman:	6 bulan penjara dtt 6.7.1999.
No Kes dan Penjara:	Case No. 82-12/99 J/Patani Rpt. 2124/99 P/Pinang pr. No. P 3055/99 HL.

(iv)

Tempat:	Mahkamah Majistret Timur Laut
Tarikh:	14.8.2002
Kesalahan dan Ordinan:	Pecah rumah dan curi malam hari Sek. 457 KK.

Hukuman:	8 bulan penjara dttt 14.8.2002.
No. Kes dan Penjara:	Case No. 82-3/02 J/Patani Rpt. 1330/02 P/Pinang pr. No. P 1921/02 HL.
	(v)
Tempat:	Mahkamah Majistret Jenayah 1 Penang
Tarikh:	20.4.2005
Kesalahan dan Ordinan:	Menakutkan secara jenayah Sek. 506 KK.
Hukuman:	Denda RM2,000.00 id 2 bulan penjara. (T. Bebas: 31.5.2005).
No. Kes dan Penjara:	Case No. 83-924-05 Jln. Patani Rpt. 2343-05 P.Pinang Pr. No. 1211-05.
	(vi)
Tempat:	Mahkamah Majistret Georgetown
Tarikh:	22.11.2007
Kesalahan dan Ordinan:	Pecah rumah dan curi malam hari Sek. 457 KK.
Hukuman:	10 bulan penjara dtt 22.11.2007.
No. Kes dan Penjara:	Case No. 83-2815-07, 83-2817-07 & 83-2828-07. Central Rpt. 3068-06 & Jelutong Rpt. 9172. P. Pinang Pr No. 41-06-01211.
	(vii)
Tempat:	Mahkamah Majistret Georgetown
Tarikh:	22.11.2007
Kesalahan dan Ordinan:	Curi. Sek. 379 K.K.
Hukuman:	7 bulan penjara dtt 11.11.2007.
No. Kes dan Penjara:	Case No. 83-2815-07, 83-2817-07 & 83-2828-07. Central Rpt. 3068-06 & Jelutong Rpt. 9172. P. Pinang Pr No. 41-06-01211.

(viii)

Tempat:	Mahkamah Majistret Georgetown
Tarikh:	22.11.2007
Kesalahan dan Ordinan:	Langgar syarat. Sek. 6(2)(d) APD.
Hukuman:	4 bulan penjara dtt 15.11.2007.
No. Kes dan Penjara:	Case No. 83-2815-07, 83-2817-07 & 83-2828-07. Central Rpt. 3068-06 & Jelutong Rpt. 9172. P. Pinang Pr No. 41-06-01211

4) From a string of previous convictions, it does not appear that the accused has really repented.

5) The present conviction is the accused's fifth time for house breaking and theft under s. 457 of the Penal Code.

6) The sentence must be to rehabilate not only the accused but also send a clear message to like-minded persons at large, that crime does not pay.

7) Prayed for a fair imprisonment term and whipping as well having regard to the accused's previous convictions on housing breaking and theft.

[14] The accused admitted his previous convictions. Learned counsel informed the court that the convictions of housing breaking and theft in the years 1995 and 1999 are spent convictions as ten years has lapsed. But the convictions for the same offence in the years 2002 and 2007 are still considered current and the present offence comes within an enhancement of sentence ie, fine or whipping under s. 457 of the Penal Code.

[15] Having heard the mitigations from learned counsel and the reply thereto by the learned deputy, I found the accused guilty, convicted and sentenced him to 14 years imprisonment term with effect from the date of arrest and also 16 strokes of whipping.